

REMARKS/ARGUMENTS

Claims 35-66 and 69 remain in the application for further prosecution. Claims 44-53, 59-66 and 69 have been withdrawn. The December 31, 2007 Office Action restricted the claims to Group I (Claims 35-43 and 54-58); Group II (Claims 44-53, 59-66 and 69) and Group III (Claims 67-68). By this paper, Applicant is provisionally electing Claims 35-43 and 54-58 in Group I with traverse. As will be explained below, Applicant respectfully submits that Groups I and II are drawn to the same invention. Applicant is provisionally withdrawing the claims in Group II, claims 44-53, 59-66 and 69.

Applicant does not traverse the restriction of Group III. Thus, Applicant is canceling claims 67-68 without prejudice.

Applicant bases the traversal on the fact that both Groups I and II may be examined in the same search. Applicant respectfully submits that the Office Action has not demonstrated an undue burden to examining both groups in the restriction requirement as required by MPEP 808.02. The claims of Group I and Group II would be covered under the same search and references that would apply to both groups of claims. The Office Action has asserted that Group I has utility by itself because it requires awarding "a progressive game payoff in response to the layer selecting a certain set of player selectable game elements." (p. 2). Applicant respectfully disagrees with the assertion that Group II is directed toward a different subcombination because Group II requires determining which of a first progressive or second progressive payoff is selected and paid to a player. (p. 3). The claims of Group I and II fundamentally base a progressive payoff from player selection. The claims in Group II trigger the payoffs from player inputs that would fall under the same search as a player selectable element as in Group I. The other two differences cited by the Office Action in Group II, namely a first and second progressive payoff and awards based on player selection would have to be searched in a search of progressive games for Group I. The same subclasses would be searched for both groups of

claims causing the Examiner no undue burden. As the Restriction Requirement concedes, the search would be conducted in the same class, 463, Amusement Devices and Games.

Applicant respectfully submits the search would have be conducted for both groups in both the cited subclass 25 (Credit/debit monitoring or manipulation (e.g., game entry, betting, prize level, etc.)) and subclass 28 (Parimutuel pools). Significantly, subclass 28 notes that it is indented under subclass 25 and therefore would be encompassed in a search of that subclass.

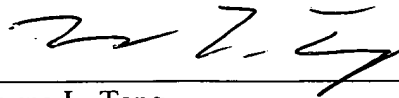
Applicant respectfully requests that the Examiner allow prosecution to proceed on the claims in both Groups I and II as the same search would have to be performed for these groups causing no undue burden to the Examiner.

Conclusion

It is Applicant's belief that all of the claims are now in condition for allowance and actions towards that effect is respectfully requested.

If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney at the number indicated.

Respectfully submitted,



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Wayne L. Tang
Reg. No. 36,028
NIXON PEABODY LLP.
161 N. Clark Street, 48th Floor
Chicago, Illinois 60601-3213
(312) 425-3900
Attorney for Applicants